

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

In re:)	
)	Chapter 11
NATIONAL STEEL CORPORATION,)	
et al.,)	Case No.02-08713
)	(Jointly Administered)
)	
Debtors.)	Judge John H. Squires
)	

**PROOF OF CLAIM OF THE UNITED STATES ON BEHALF OF
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
AGAINST GREAT LAKES STEEL CORPORATION**

1. The United States files this Proof of Claim at the request of the U.S.

Environmental Protection Agency ("EPA"). The Attorney General is authorized to make this Proof of Claim on behalf of the United States. This Proof of Claim asserts claims against the Great Lakes Steel Corporation (referred to herein as "Debtor") for:

(a) the recovery of civil penalties for pre-petition violations of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901-6992K, and regulations promulgated thereunder, at the Debtor's Great Lakes facility in Ecorse and River Rouge, Michigan;

(c) the recovery of civil penalties for pre-petition violations of the Clean Air Act, 42 U.S.C. §§ 7401-7671q, and regulations promulgated thereunder, at the Debtor's Great Lakes facility in Ecorse and River Rouge, Michigan;

(d) the recovery of civil penalties for pre-petition violations of the Clean

Water Act, 33 U.S.C. §§ 1251-1387, and regulations promulgated thereunder, at the Debtor's Great Lakes facility in Ecorse and River Rouge, Michigan;

(e) the recovery of civil penalties for pre-petition violations of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601-9675, and the regulations promulgated thereunder, at the Debtor's Great Lakes facility in Ecorse and River Rouge, Michigan;

(f) the recovery of civil penalties for pre-petition violation of the Emergency Planning and Community Right to Know Act, 42 U.S.C. §§ 11001-11050, and the regulations promulgated thereunder, at the Debtor's Great Lakes facility in Ecorse and River Rouge, Michigan;

(g) the recovery of civil penalties for pre-petition violations of the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2692, and regulations promulgated thereunder, at the Debtor's Great Lakes facility in Ecorse and River Rouge, Michigan.

CLEAN AIR ACT AIR-ACT PENALTY CLAIMS

2. Debtor is liable to the United States for civil penalties for pre-petition violations of the Clean Air Act, 42 U.S.C. §§ 7401-7671q, and regulations promulgated thereunder, at its Great Lakes facility in Ecorse and River Rouge, Michigan.

3. On at least one occasion during 2001, the Debtor allowed or caused emissions from the electrostatic precipitator stack for the No. 2 Basic Oxygen Furnace at the Great Lakes facility to exceed the opacity limit for more than 6-minutes during an hour in violation of the facility's operating permit and the provisions of Michigan's state implementation plan. See

Mich. Admin. Code R. 336.1301; 40 C.F.R. 52.1170 (approving Michigan's state implementation plan). Accordingly, Debtor is liable for civil penalties of up to \$27,500 per day of each violation occurring on or after January 31, 1997 pursuant to 42 U.S.C. § 7413 and 40 C.F.R. §19.4.

4. On at least one occasion during 2001, Debtor caused or allowed a leak of fugitive emissions from the seal pot at the coke oven by-product plant at the Great Lakes facility in violation of the facility's operating permit and Mich. Admin. Code R. 336.1301. Accordingly, Debtor is liable for civil penalties of up to \$27,500 per day of each violation occurring on or after January 31, 1997 pursuant to 42 U.S.C. § 7413 and 40 C.F.R. §19.4.

5. The United States hereby asserts a claim against the Debtor for civil penalties for the pre-petition violations of the Clean Air Act described in paragraphs 3-4 above, for an amount to be determined by a court or administrative agency with jurisdiction.

RESOURCE CONSERVATION AND RECOVERY ACT PENALTY CLAIMS

6. Debtor is liable to the United States for civil penalties for pre-petition violations of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901-6992k, and regulations promulgated thereunder, at the Great Lakes facility in Ecorse and River Rouge, Michigan. RCRA provides for civil penalties of up to \$27,500 per day of violation occurring on or after January 31, 1997 pursuant to 42 U.S.C. § 3008(g) and 40 C.F.R. § 19.4.

7. Debtor is, and was at the time of the violations, the "owner" and "operator" of the Great Lakes facility within the meaning of RCRA and the governing regulations. At all times relevant to the allegations, "hazardous waste" was "generated" and "stored" at the Great Lakes

facility within the meaning of RCRA and the governing regulations. This facility is, and was at the time of the violations alleged, a hazardous waste treatment, storage, management and/or disposal "facility," within the meaning of RCRA and the governing regulations.

8. Based upon the observations of EPA inspectors, the United States believes that further fact-finding will demonstrate that Debtor has been improperly managing used oil in surface impoundments at its Great Lakes facility. The United States believes that further fact-finding will establish that wastewater contaminated with greater than *de minimus* quantities of used oil was being managed in surface impoundments in noncompliance with Mich. Admin. Code R. 299.9809, 299.9810 and 40 C.F.R. §§ 279.12(a), 279.22. If the United States demonstrates that Debtor was or is not complying with the regulations cited above, then Debtor is liable for civil penalties of up to \$27,500 per day for each violation pursuant to 42 U.S.C. § 6928(g) and 40 C.F.R. § 19.4.

9. On at least one occasion during 2001, Debtor improperly stored certain hazardous wastes at the Great Lakes facility by accumulating hazardous wastes generated at the laboratory building in small five or ten gallon containers and then consolidating those wastes in a fifty-five gallon drum sitting outside of the laboratory building exposed to the elements and other destructive forces. This constitutes a violation of 40 C.F.R. §§ 262.34, 26.175 and Mich. Rule R. 299.9306(1)(3), 299.9306 and therefore Debtor is liable for civil penalties of up to \$27,500 per day per violation pursuant to 42 U.S.C. § 6928(g) and 40 C.F.R. § 19.4.

10. On at least one occasion during 2001, Debtor accumulated spent pickle liquor (K062) at the Great Lakes facility either without an active contract for its sale or without maintaining a copy of that contract for inspection by EPA and therefore violated 40 C.F.R. §

261.2 and Mich. Admin. Code R. 299.4105, 299.9202(5). Accordingly, Debtor is liable for civil penalties of up to \$27,500 per day per violation pursuant to 42 U.S.C. § 6928(g) and 40 C.F.R. § 19.4.

11. On at least one occasion during 2001, Debtor failed to properly train its Great Lakes facility employees responsible for handling hazardous wastes in violation of Mich. Rule R. 299.9306(d) and 40 C.F.R. § 365.16(c). Accordingly, Debtor is liable for civil penalties of up to \$27,500 per day per violation pursuant to 42 U.S.C. § 6928(g) and 40 C.F.R. § 19.4.

12. In at least 1999, 2000, and 2001, Debtor violated Mich. Rule R. 299.9614 and 40 C.F.R. § 265.17 by failing to ensure that the Zug Island drum storage area of the Great Lakes facility was inspected weekly. Accordingly, Debtor is liable for civil penalties of up to \$27,500 per day per violation pursuant to 42 U.S.C. § 6928(g) and 40 C.F.R. § 19.4.

13. For at least the months of November 1999 through April 2000 and November 2000 through March 2001, at the Great Lakes facility, Debtor failed to monitor the underground storage tank known as Tank MA-3A for releases as required by 40 C.F.R. 280.41(a) and Mich. Admin. Code R. 29.125. Accordingly, Debtor is liable for civil penalties of up to \$27,500 per day per violation pursuant to 42 U.S.C. § 6928(g) and 40 C.F.R. § 19.4.

14. During at least the month of November 2000, at the Great Lakes facility, Debtor failed to maintain an appropriate gauge for the underground storage tank known as Tank AN-6A in violation of 40 C.F.R. 280.41(a) and Mich. Admin. Code R. 29.2122. Accordingly, Debtor is liable for civil penalties of up to \$27,500 per day per violation pursuant to 42 U.S.C. § 6928(d) and 40 C.F.R. § 19.4.

15. During at least March 2001, at the Great Lakes facility, Debtor failed to properly

operate its tank leak detection systems for at least the tanks known as MP-4A, MA-3A, and MP-11A. Accordingly, Debtor violated the requirements of 40 C.F.R. and Mich. Admin. Code R. 29.2121 on at least three occasions, and Debtor is therefore liable for civil penalties of up to \$27,500 per day per violation pursuant to 42 U.S.C. § 6992d(d) and 40 C.F.R. § 19.4.

16. The United States hereby asserts a claim against Debtor for civil penalties for the pre-petition violations of RCRA described in paragraphs 8-15 above, for an amount to be determined by a court or administrative agency with jurisdiction.

CLEAN WATER ACT PENALTY CLAIMS

17. Debtor is liable to the United States for civil penalties for pre-petition violation of the Clean Water Act, 33 U.S.C. §§ 1251-1387, and regulations promulgated thereunder, at the Great Lakes facility in Ecorse and River Rouge, Michigan.

18. Since at least January 1999, Debtor's discharges from its Great Lakes facility have been subject to at least three NPDES permits: No. MI0026786, MI0002313, and MI0026778. Since at least January 1999, Debtor's wastewater discharges from the Great Lakes facility have violated the numerical or narrative limits contained in those permits on at least thirteen occasions. With respect to each of these permit violations, Debtor is liable for penalties of up to \$27,500 per day pursuant to 33 U.S.C. § 1319(d) and 40 C.F.R. § 19.4.

19. Since at least March 2001, Debtor has failed to properly collect and analyze compliance samples at the Great Lakes facility as required by 40 C.F.R. § 363, Table II as referenced by NPDES permits No. MI0026786, MI0002313, and MI0026778 on at least two occasions. Accordingly, Debtor is liable for these violations of the Clean Water Act for penalties

of up to \$27,500 per day pursuant to 33 U.S.C. § 1319(d) and 40 C.F.R. § 19.4.

20. On at least one occasion during 2001, at the Great Lakes facility's Main Plant, Debtor has violated 40 C.F.R. § 112.7 by failing to provide adequate secondary containment at the Combined Municipal Waste Water Treatment Plant where four tanks are used to store used oil and at the Transportation Department, where a tank is used to store waste oil. Accordingly, Debtor is liable for these violations for civil penalties of up to \$27,500 per day per violation pursuant to 33 U.S.C. § 1319(d) and 40 C.F.R. § 19.4.

21. On at least one occasion during 2001, at the Great Lakes facility's Main Plant, Debtor has also failed to provide gauges for oil storage tanks in violation of 40 C.F.R. §§ 112.7, 112.8. Accordingly, Debtor is liable for civil penalties of up to \$27,500 per day per violation pursuant to 33 U.S.C. § 1319(d) and 40 C.F.R. § 19.4.

22. On at least one occasion during 2001, at the Great Lakes facility's Main Plant, Debtor has further failed to have an accurate and complete SPCC Plan because its Plan fails to properly describe the underground storage tanks, fails to identify certain oil-filled transformers with no secondary containment, and fails to discuss the procedures for inspecting the areas of potential spills. Each of these failures constitutes a violation of the 40 C.F.R. § 112.7. Accordingly, Debtor is liable for civil penalties of up to \$27,500 a day per violation pursuant to 33 U.S.C. § 1319(d) and 40 C.F.R. § 19.4.

23. On at least one occasion during 2001, at the Great Lakes facility's 80-inch Hot Mill, the SPCC Plan failed to set forth the plan for testing the gauges on the oil storage tanks, in violation of 40 C.F.R. § 112.8, for which Debtor is liable for civil penalties of up to \$27,500 a day per violation pursuant to 33 U.S.C. § 1319(d) and 40 C.F.R. § 19.4.

24. On at least one occasion during 2001, at the Great Lake Division's 80-in Hot Mill, there are several areas at the Mill with inadequate secondary containment, including several tanks and certain oil-containing transformers. The absence of adequate secondary containment is a violation of 40 C.F.R. §§ 112.7, 112.8. Accordingly, Debtor is liable for civil penalties of up to \$27,500 a day per violation pursuant to 33 U.S.C. § 1319(d) and 40 C.F.R. § 19.4.

25. The United States hereby asserts a claim against Debtor for civil penalties for the pre-petition violations of the Clean Water Act described in paragraphs 18-24 above, for an amount to be determined by a court or administrative agency with jurisdiction.

26. At the Zug Island portion of the Great Lakes Division plant, on at least one occasion, National Steel failed to have a proper and complete spill prevention, containment and counter-measures plan and failed to have adequate secondary containment for certain coal tar storage tanks. On October 30, 2002, EPA and National Steel entered into a Consent Agreement and Final Order In the matter National Steel Corporation, Great Lakes Division, River Rouge, Michigan, U.S. EPA Docket No. CWA-05-2001-10. Under that Order, U.S. EPA shall have an allowed general unsecured claim of \$85,000. Debtor is therefore liable to the EPA for this \$85,000 allowed claim.

CERCLA AND EPCRA CIVIL PENALTY CLAIMS

27. Debtor is liable to the United States for civil penalties for pre-petition violations of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601-9675, and the regulations promulgated thereunder, and the Emergency Planning and Community-Right-to-Know Act ("EPCRA"), 42 U.S.C. §§ 11001-11050, at the

Great Lakes facility in Ecorse and River-Rouge, Michigan.

28. Since at least January 1998, Debtor has failed to immediately notify the National Response Center of at eight reportable releases from the Great Lakes facility in violation of 42 U.S.C. §§ 9603, 11004(b) and 40 C.F.R. § 302.6(a). Accordingly, Debtor is liable for liable for civil penalties of up to \$27,500 per day per violation.

29. The United States hereby asserts a claim against Debtor for civil penalties for the pre-petition violations of CERCLA described in paragraph 28 above, for an amount to be determined by a court or administrative agency with jurisdiction.

TOXIC SUBSTANCES CONTROL ACT PENALTY CLAIMS

30. Debtor is liable to the United States for civil penalties for pre-petition violation of the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2692, and regulations promulgated thereunder, at the Great Lakes facility in Ecorse and River Rouge, Michigan.

31. Since at least 2001, Debtor has violated the regulations regarding the labeling and dating of PCB-containing wastes at the Great Lakes Division facility on approximately three occasions. The failures to properly label and date PCB containing wastes are violations of 40 C.F.R. § 761.40. Accordingly, Debtor is liable for civil penalties of up to \$27,500 per day per violation pursuant to 15 U.S.C. § 2615 and 40 C.F.R. § 19.4.

32. During at least the first quarter of 1998 and the fourth quarter of 2000, Debtor either failed to perform visual inspections of PCB transformers at the Great Lakes facility every three months as required by 40 C.F.R. § 761.30(a)(1)(ix), or Debtor failed to maintain records of those inspections as required by 40 C.F.R. § 761.(a)(1)(xii). Accordingly, Debtor is liable for

civil penalties of up to \$27,500 per day per violation pursuant to 15 U.S.C. § 2615 and 40 C.F.R. § 19.4.

33. In addition, for at least the fourth quarter of 1999, Debtor failed to timely perform its visual inspection of PCB transformers at the Great Lakes facility in violation of 40 C.F.R. § 761.30(a)(1)(x). Accordingly, Debtor is liable for civil penalties of up to \$27,500 per day per violation pursuant to 15 U.S.C. § 2615 and 40 C.F.R. § 19.4.

34. Since at least 2001, on at least one occasion, Debtor failed to properly store PCB containing material at the Main Plant of the Great Lakes facility in violation of 40 C.F.R. § 761.30(a)(1)(viii). Accordingly, Debtor is liable for civil penalties of up to \$27,500 per day per violation pursuant to 15 U.S.C. § 2615 and 40 C.F.R. § 19.4.

35. Since at least 2001, on at least one occasion, Debtor has improperly disposed of PCBs at the Great Lakes facility by failing to timely and fully clean up leaks of PCB containing materials from transformers. Therefore, Debtor has violated 40 C.F.R. § 761.60 and is liable for civil penalties of up to \$27,500 per day pursuant to 15 U.S.C. § 2615 and 40 C.F.R. § 19.4.

36. The United States hereby asserts a claim against Debtor for civil penalties for the pre-petition violations of the Toxic Substances Control Act described in paragraphs 31-35 above, for an amount to be determined by a court or administrative agency with jurisdiction.

INJUNCTIVE OBLIGATIONS UNDER ENVIRONMENTAL STATUTES

37. The Debtor has injunctive obligations to comply with environmental requirements, including but not limited to obligations to perform environmental assessment and remediation work under: (1) an administrative Consent Agreement and Final Order under

EPCRA § 313 relating to National Steel's Granite City facility in Granite City, Illinois and the Great Lakes facility in Ecorse, Michigan, In the Matter of National Steel Corporation Granite City and Great Lakes Divisions - Granite City, IL/Ecorse, MI, U.S. EPA Docket No. EPCRA # 05-2002-0003 (November 2, 2001); and (2) an administrative Consent Agreement and Final Order under the Clean Water Act relating to National Steel's Great Lakes Division facility in River Rouge, Michigan, In the Matter of: National Steel Corporation Great Lakes Division, River Rouge, Michigan, U.S. EPA Docket No. CWA # 05-2001-10 (October 30, 2002).- Debtor has other injunctive obligations under environmental laws, including but not limited to obligations under the Clean Air Act, RCRA, Clean Water Act, EPCRA, CERCLA, and the Toxic Substances Control Act at the Great Lakes facility.

38. It is the United States' position that it is not required to file a proof of claim with respect to Debtor's injunctive obligations to comply with work requirements under Consent Decrees and Court Orders and Consent Agreement and Final Orders, and to comply with other environmental requirements imposed by law. Debtor and any reorganized debtor(s) must comply with the mandatory injunctive requirements of those Consent Decrees and Court Orders and Consent Agreement and Final Orders and must comply with other environmental requirements imposed by law.

39. Court-ordered and regulatory obligations are mandatory injunctive obligations with which Debtor must comply, and for which proofs of claim need not be filed under the Bankruptcy Code. Nevertheless, this claim is filed in a protective fashion only to protect the United States' rights with respect to such obligations of National Steel. The United States reserves the right to take future actions to enforce any such obligations of National Steel.

Nothing in this Proof of Claim constitutes a waiver of any rights of the United States or an election of remedies.

ADDITIONAL TERMS

40. This claim reflects the known liability of the Debtor to the United States on behalf of EPA. The United States reserves the right to amend this claim to assert subsequently discovered liabilities. This proof of claim is without prejudice to any right under 11 U.S.C. § 553 to set off, against this claim, debts owed (if any) to the debtor by this or any other federal agency.

41. The United States has not perfected any security interest on its claim against the debtor.

42. This claim is filed as a general unsecured claim except to the extent of any secured/trust interest in insurance proceeds received by the Debtor on account of environmental claims of the United States, and to the extent the United States is entitled to administrative expense priority for post-petition penalties. The United States will file any application for administrative expense priority at the appropriate time. See also paragraphs 37-39 *supra*.

43. Except as expressly stated in this Proof of Claim, no judgments against the Debtor have been rendered on this Proof of Claim.

44. Except as expressly stated in this Proof of Claim, the Debtor has not made any payments to the United States on these claims.

45. This Proof of Claim is also filed to the extent necessary to protect the United States' rights relating to any insurance proceeds received by the Debtor relating to any of the sites discussed herein.

Respectfully submitted,

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